

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
LAKE SAMISH COMMUNITY ASSOCIATION,)
)
Appellant,)
)
v.)
)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY)
AND ROBERT AND GWEN SMITH,)
ROSS AND DIANE MOLBERG AND)
CHARLES AND GENE LONGSTRETH,)
)
Respondents.)

PCHB No. 78-268

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal from the issuance of a permit to appropriate surface water from Lake Samish, came before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, Chris Smith and David Akana (presiding) at a formal hearing on April 23, 1979 in Seattle.

Appellant was represented by Bruce Harris, its Chairman, and Eric Nasburg; respondent-permittees were represented by their attorney, Joel Haggard; respondent department was represented by Robert Mack, Assistant Attorney General.

DA/LB

1 Having heard the testimony, having examined the exhibits, and
2 having considered the contentions of the parties, the Board makes these

3 FINDINGS OF FACT

4 I

5 This matter is the appeal by Lake Samish Community Association
6 (hereinafter referred to as "appellant") of a decision by the Department
7 of Ecology (hereinafter referred to as "department") to issue a Surface
8 Water Permit (No. S1-22926P) to the Smiths, Molbergs and Longstreths
9 (hereinafter referred to as "permittees").

10 II

11 Permittees applied to the department for the withdrawal of water
12 from Lake Samish in the amount of 0.22 cubic feet per second (cfs) and
13 161 acre-feet per year for a community domestic water supply for a
14 120 lot proposed subdivision. The department published notice
15 of the application but did not receive any protest thereto until after
16 the protest period when many letters indicating concern about the
17 application were received and considered by the department.

18 III

19 Lake Samish is 826 acres in area and is designated class AA,
20 which indicates "extraordinary" water quality.¹ The lake flows into
21 Friday Creek during seven to eight months of each year. Friday Creek is a
22 source of water for the state's Samish Hatchery, which produces about three
23 million fall chinook annually. The hatchery has available to it other

24
25 1. The waters of Lake Samish were not specifically classified
26 under WAC 173-201-080. Consequently, the general classification
27 provision WAC 173-201-070 applies, i.e., class AA. The lake is
classified by regulation rather than actual testing.

1 supplies of water.

2 IV

3 Based upon withdrawal calculations for 94 lots in the
4 subdivision (later reduced to 89 lots), at a rate of twice the average
5 water usage, respondent determined that this withdrawal would cause the lak
6 level to decline $3/8$ inch during four summer months, if there was no water
7 inflow during that period. Under normal conditions, the lake
8 level would be maintained during the remainder of the year but outflow
9 to Friday Creek would be reduced about 0.1 cfs. A consultant's conservativ
10 estimate of $1/2$ inch maximum lake drawdown over a six month period
11 assuming no rain, and a more realistic expected $1/4$ inch lake drawdown wit
12 a 0.06 cfs reduction in flow through Friday Creek, compare favorably to the
department's calculations. Even with the proposed withdrawal, Lake
14 Samish will be retained substantially in its natural condition.

15 V

16 Both the Departments of Fisheries and Game did not object to the
17 withdrawal requested in the application if it was reduced in amount and use
18 for the purposes of domestic supply.

19 VI

20 After considering the Environmental Impact Statement (EIS) prepared by
21 Whatcom County, the lead agency for the proposal, and the information
22 developed by the consultants, Department of Fisheries, and its own
23 technical resources, the department determined that there would be
24 no measurable impact upon the water quality of Lake Samish as a direct or
25 indirect result of the appropriation of water allowed by this permit. The
-0 department thereafter issued a permit for 0.15 cfs and 81 acre-feet

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1 of water, which decision was timely appealed to this Board.

2 VII

3 Any Conclusion of Law which should be deemed a Finding of Fact
4 is hereby adopted as such.

5 From these Findings the Board comes to these

6 CONCLUSIONS OF LAW

7 I

8 The requirements governing the withdrawals of water are contained
9 in RCW 90.03.290 and involve four determinations: 1) is water
10 available; 2) will the water be applied to a beneficial use;
11 3) will the appropriation impair existing rights; 4) will the
12 appropriation detrimentally affect the public welfare? The evidence
13 shows that water is available for domestic purposes, a beneficial use,
14 and will not impair existing rights. As to the fourth determination--
15 detriment to the public welfare--appellant contends that water runoff
16 from the subdivision to the lake and human health considerations raised by
17 such runoff to the lake requires further study by the department and
18 reversal of the instant permit, relying upon Sterpel v. Department of
19 Water Resources, 82 Wn.2d 109 (1973). In that case, the State Environment
20 Policy Act (SEPA) (chapter 43.21C RCW) and the Water Resources Act
21 (WRA) (chapter 90.54 RCW) were held to apply to the water permit
22 issuing process so as to assure that environmental values were given
23 appropriate consideration in the decision and that pollution reentry
24
25

26 FINAL FINDINGS OF FACT,
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1 to a lake from domestic water use was properly evaluated.²

2 Since Stempel, the SEPA guidelines established the designation
3 of a "lead agency" to avoid jurisdictional conflicts and ensure
4 environmental consideration by the appropriate agencies. While the
5 department is an agency with jurisdiction and expertise, it is not the
6 lead agency for SEPA purposes. Whatcom County, as the lead agency, is
7 responsible for the EIS and for conditioning its licenses to prevent or
8 mitigate any adverse environmental effects; the department must similarly
9 condition licenses within its jurisdiction. Thus, appellant's concerns
10 cannot be adequately addressed by the department in its approval of a
11 water right permit; rather, appellant's concerns should be addressed to the
12 County, which must issue several non-exempt licenses of broader impact and
13 relevancy to appellant's concerns than the department's water right permit.
14 We therefore conclude that appellant's concerns raised under SEPA
15 does not prevent the issuance of this permit.

16 II

17 With regard to appellant's contentions under the WRA, it was not
18 shown that Lake Samish would not be retained substantially in its
19 natural condition or that the existing water quality of the lake would
20 be reduced. Respondents affirmatively showed otherwise. Further,
21 appellants did not show that a water supply for the proposed plat was
22

23 2. Subsequent to Stempel, the SEPA guidelines were promulgated
24 which exempted the appropriation of 1 cfs or less of surface water
25 for any purpose from the threshold determination and EIS requirements
26 of SEPA. WAC 197-10-170(2). The instant application before the
department, which is a part of a series of actions, some of those
being non-exempt, is no longer exempt, however. WAC 197-10-190.

27 FINAL FINDINGS OF FACT,
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1 available from another source serving the public. Other provisions
2 of the WRA cited by appellant are not relevant to this permit review.

3 III

4 Appellant did not show any ground upon which the department's
5 substantive decision could be reversed. Accordingly, the department's
6 issuance of the surface water permit should be affirmed.

7 IV

8 Any Finding of Fact, which should be deemed a Conclusion of Law
9 is hereby adopted as such.

10 From these Conclusions the Board enters this

11 ORDER

12 Surface Water Right Permit No. Sl-22926P issued by the Department
13 of Ecology is affirmed.

14 DATED this 21st day of MAY, 1979.

15 POLLUTION CONTROL HEARINGS BOARD

16 Dave J. Mooney
17 DAVE J. MOONEY, Chairman

18 Chris Smith
19 CHRIS SMITH, Member

20 David Akana
21 DAVID AKANA, Member